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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Billed Party Preference	)	CC Docket No. 92-77
For 0 + InterLATA Calls	)	

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REPLY COMMENTS OF PACIFIC TELESIS GROUP

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SUMMARY

Pacific Telesis supports the Commission's decision to establish benchmarks for OSPs' consumer rates and related charges that reflect what customers expect to pay; and to require OSPs that charge rates above that benchmark to disclose the applicable charges to consumers orally before connecting the call. Despite argument to the contrary, the Commission has specific statutory authority to establish benchmarks and disclosure requirements that require oral disclosure of the actual price of a call. Further, instituting such requirements does not violate any provisions in the United States Constitution. Indeed, implementation of these requirements will serve to protect telecommunications consumers.

Consumers will receive additional protection if the Commission requires price disclosure for inmate 0+ calls priced above the benchmark. However, consumers will not be properly served by additional regulation in this area. Pacific Telesis urges the Commission to discontinue further consideration of Billed Party Preference. Consideration of Billed Party Preference is especially inappropriate in the local number portability proceeding because the number portability database is not intended or envisioned to support Billed Party Preference. Pacific Telesis also requests that the Commission avoid requiring the filing of tariffs because OSP disclosure requirements are all that is necessary to protect consumers. Pacific Telesis asserts that implementation of the above recommendations will serve the public interest.

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REPLY COMMENTS OF PACIFIC TELESIS GROUP

Pacific Telesis Group ("Pacific Telesis") respectfully submits these reply comments before the Federal Communications Commission ("FCC" or "Commission") in response to its *Second Further Notice of Proposed Rulemaking* in the above captioned proceeding.[1]

After review of the comments filed by other interested parties in response to the *Second Further Notice*, Pacific Telesis replies to the following issues: (1) FCC authority for establishing disclosure requirements; (2) the proper level for benchmarks; (3) abandoning Billed Party Preference, particularly in connection with local number portability; (4) forbearance from informational tariffs; and (5) prison inmate calling.

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[1] *Billed Party Preference for 0+ InterLATA Calls*, Second Further Notice of Proposed Rulemaking, FCC 96-253 (rel. June 6, 1996) ("*Second Further Notice*"); *see* 61 Fed. Reg. 30581 (June 17, 1996).

I. INTRODUCTION

The notion of Billed Party Preference ("BPP") has been under Commission consideration for some time. As pointed out in the *Second Further Notice*, the Commission tentatively concluded, in May 1994, that the implementation of a BPP system for 0+ InterLATA payphone traffic, as well as for other types of operator-assisted interLATA traffic, would serve the public interest.[2] The intent of BPP was to ensure that operator-assisted long-distance traffic would be carried automatically by the operator service provider preselected by the party being billed for the call. Thus, BPP was envisioned as a mechanism that would transform the confusing and often times infuriating world of 0+ calling into a more "consumer-friendly" environment. While the potential public interest benefit associated with billed party preselection made BPP worthy of consideration -- implementation of BPP was soon discovered to be formidably expensive.

Due to an estimated one billion dollars in costs associated with BPP, the Commission in its recently released *Second Further Notice* effectively abandons any attempt at a full scale implementation of BPP.[3] However, as

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[2] *Billed Party Preference for 0+ InterLATA Calls*, Further Notice of Proposed Rulemaking, CC Docket No. 92-77, 9 FCC Rcd. 2320 (1994) ("*Further Notice*").

[3] Although the California Public Utilities Commission and the National Association of Regulatory Utility Commissioners continue to call for a determination of whether BPP implementation is cost justified, it is clear that (continued...)

noted in the *Second Further Notice*, there are still major consumer concerns with 0+ dialing. Currently, some operator service providers ("OSPs") compete by charging extremely high rates to consumers and then employ those proceeds to pay large commissions to both premises owners and sales agents. Worse yet, consumers are often unaware of the charges that they incur when placing and receiving a 0+ call. Therefore, no real incentives exist that would compel OSPs, owners or sales agents to work toward lowering prices. In fact, since commissions are tied to the rates charged for each call, there exists a perverse incentive for the continual escalation of 0+ rates.

For that reason, the *Second Further Notice* tentatively concludes that the Commission should establish benchmarks for OSPs' consumer rates and associated charges that reflect what consumers expect to pay. Further, the *Second Further Notice* would require OSPs that charge rates greater than the deemed percentage above a composite of the 0+ rates charged by the largest three interstate interexchange carriers to disclose the applicable charges for the call to consumers orally before connecting a call.

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[3](...continued)
the benefits of a billion dollar system are outweighed by its costs. Therefore, the Commission has properly moved beyond consideration of BPP as a solution for the zero plus dialing problems that exist today and, pursuant to the *Second Further Notice*, proposes less costly alternative means of achieving the goals of BPP. The Commission did intimate that BPP may be considered in the near future. However, for reasons explained in Section IV, *infra*, such consideration should not take place.

The *Second Further Notice*, therefore, strikes a balance between the interests of consumers and the economic burdens imposed on OSPs. Nevertheless, this balanced approach has been challenged on several fronts by some of the commentors in the initial round. Pacific Telesis believes that the Commission has, for the most part, come up with well-reasoned and appropriate tentative conclusions.

II. THE COMMISSION HAS BOTH STATUTORY AND CONSTITUTIONAL AUTHORITY TO ESTABLISH ITS DISCLOSURE REQUIREMENTS

Some parties to this proceeding are concerned that the imposition of a disclosure requirement is unfair punishment.[4] This is not so. The disclosure requirement is a consumer protection measure, pure and simple. It allows consumers to be informed of the price they will be paying when that price is substantially higher than what they would normally expect to pay. The required disclosure would be a completely factual statement about the actual costs of the call. Nothing derogatory need be included in the announcement.[5]

Other parties argued that oral disclosure is unnecessary because customers are familiar with alternatives to 0+ calling including popular dial

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[4] *See, e.g.*, Oncor Comments at 5.

[5] The message will be along the lines of: "this call will cost ___ dollars for the first minute, then ___ dollars every additional minute.

around options such as 1-800-COLLECT and 1-800-CALL-ATT.[6] However, dial around alternatives do not provide customers with rate information any more than traditional 0+ dialing does. The increasing popularity of dial around services does not help consumers discover whether a particular OSP is charging unreasonably high 0+ rates.

For that reason, oral disclosure of calls above the benchmark is clearly merited. The Competitive Telecommunications Association ("CompTel") argues that consumers could be adequately protected if an announcement stated that rates may be obtained "upon request." This suggestion, however, is an attempt by CompTel to ensure that its rates, as far as possible, are concealed from consumers. It is unlikely that consumers will seek such information unless there was some indication that the rates being charged fall outside of their expectations.

To avoid consumer confusion and deception, Pacific Telesis supports oral disclosure, of actual prices, at the time of the call. Such disclosure would be based on the actual price of the call rather than the average price of a hypothetical call. Average price disclosure would likely cause consumer confusion because averages do not closely coincide with what consumers will

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[6] *See, e.g.*, Oncor Comments at 12.

inevitably pay due to variations in the call such as its length, the time of day and its mileage band. Disclosure of actual prices would be more accurate.[7]

However, many OSPs have expressed concern that actual price quotes would be technically and/or economically infeasible. If the Commission concludes that actual price quotes are technically infeasible at this time, the Commission should require the disclosure of average prices until the quotations become technically feasible. Adoption of average price disclosure, as an interim measure, would be less burdensome on OSPs.[8] If such action is taken, the Commission should establish a reasonable time period in which OSPs must be able to quote actual prices.

Many state regulators argued in favor of the policy that goes a step farther than the recommendation in the *Second Further Notice*. The regulators requested that the Commission require full rate disclosure statements on every call provided by any carrier no matter how reasonable their prices are.

Universal price disclosure of all 0+ calls is not warranted. A common theme throughout the comments is that the costs of universal disclosure outweigh its benefits because unrestricted disclosure would needlessly

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[7] Actual price disclosure means that OSPs would reveal charges per minute of use. Such disclosure would not reflect discounts based on total monthly calling or property owner surcharges.

[8] One party to this proceeding points out that parties could provide quotes based on average prices immediately. Intellicall Companies Comments at 13 (describing average price disclosure as "more readily implementable.").

increase the costs of carriers that charge low rates and would require an increase in rates to cover such costs. In fact, universal disclosure has nearly been universally rejected by commentors as cost prohibitive. U S West approximated the costs of universal price disclosure at fifty cents per call.[9] Passing these expenses to all 0+ consumers will not work to alleviate high rates. Rather, it would do the very opposite.

In addition to adding unnecessary costs to low cost providers, universal disclosure would also substantially increase switch holding times and delay completion time for all calls. While several parties maintain that universal disclosure would needlessly increase the connect time for each call, Bell Atlantic specifies that universal disclosure would add up to twenty seconds of holding time to each operator assisted call. This increased holding time would, in turn, add to the costs associated with universal disclosure by requiring OSPs to add capacity to their operator switches and transmission systems.[10] The benefits of universal disclosure, if any, are outweighed by its additional costs, and inconvenience. This is especially true since most 0+ calls are priced at or below the levels that consumers expect them to be priced.

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[9] U S West Comments at 10-11.

[10] Bell Atlantic Comments at 4-7.

A. The FCC has the Authority to Establish Disclosure Requirements

CompTel and other commentors argue that there is no legal basis in the 1996 Act that allows the FCC to adopt its disclosure proposal. CompTel asserts that the Telephone Operator Consumer Services Improvement Act ("TOCSIA") does not authorize the Commission to require OSPs to announce their exact rates during calls.[11] Comptel argues that TOCSIA grants the FCC the right to take action if an OSP's rates and changes appear to be unreasonable. However, CompTel and others claim that there has been no showing of unreasonableness.

Parties arguing against Commission authority, generally, and based on TOCSIA, specifically, have conducted an overly-restrictive reading of the Commission's statutory and regulatory powers. This reading leads them to the conclusion that FCC authority does not exist because the very words in the *Second Further Notice* do not appear in the U.S. Code. Illustrative of this point is CompTel's statement that the Commission "may regulate only insofar as it is specifically authorized by the Communications Act."[12] Comptel, however, completely ignores relevant sections of the U.S. Code that liberally grant the Commission authority in this area. 47 U.S.C. § 226(d)(1) states that:

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[11] Telephone Operator Consumer Services Improvement Act of 1990, Pub L. No. 101-435, 104 Stat. 986 (1990), *codified* at 47 U.S.C. §226.

[12] CompTel Comments at 4-5.

> The Commission shall conduct a rulemaking proceeding pursuant to this subchapter to prescribe regulations to- (A) *protect consumers from unfair and deceptive practices* relating to their use of operator services to place interstate calls; and (B) *ensure that consumers have the opportunity to make informed choices* before making such calls.[13]

Protecting consumers from unfair and deceptive pricing, and ensuring that they can make informed choices (as opposed to the blind choices which are currently being made) is precisely what is driving this proceeding. In light of the Commission's strict adherence to 47 U.S.C. § 226(d)(1), it is inconceivable that parties would argue, under the very same Section of the U.S. Code, that the FCC has no authority for this rulemaking.

Notably, subsection one of 47 U.S.C. § 226(d) is not the only relevant provision here. The following subsection of the code states that:

> The regulations prescribed under this section shall -- . . . contain provisions to implement each of the requirements of this section, and . . . contain such other provisions as the Commission determines necessary to carry out this section and the purposes and policies of this section.[14]

Thus, Oncor's argument that the Commission may require disclosure of rate information only "upon request" and CompTel's argument that disclosure can only occur after a rate investigation fail to recognize that 47 U.S.C

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[13] 47 U.S.C. § 226(d)(1) (emphasis added).

[14] 47 U.S.C. § 226(d)(2).

§ 226(d) gives much more leverage to the Commission to establish these requirements. In fact, the broad statutory language allowing the Commission to enact rules that "carry out [47 U.S.C § 226] and [its] purposes and policies" appear to give the Commission plenary authority in this area.[15]

An additional argument challenging the Commission's authority was presented by Oncor when it asserted that mandatory rate disclosure contravenes the Communications Act's method of establishing reasonable rates contained in Section 205 and is otherwise arbitrary.[16] However, Oncor's comments display a fundamental misunderstanding of what the Commission is seeking to do. The benchmark system is not a determination of the lawfulness of any OSP rates. The *Second Further Notice* does not expressly or impliedly forbid rates in excess of the benchmark. The benchmark is simply a mechanism used to trigger alerting consumers to high rates. Further, while the benchmark may not be empirical, it is not at all arbitrary. It is based on the leading companies in the industry and requires each OSP to evaluate themselves against the leader.[17]

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[15] *Id.*

[16] Oncor Comments at 4-10.

[17] Market leaders are a common measuring stick for industries. It would seem irrational for a publicly traded company to argue that the S&P 500, which is often used side by side with actual company figures, is an "arbitrary" measure.

B. Use of AT&T, MCI and Sprint's Rates to Develop a Benchmark Does Not Violate the Equal Protection Clause

In its initial comments, CompTel asserts that the "Commission's use of AT&T, MCI and Sprint's rates to define consumer expectations violates the Equal Protection Clause of the U.S. Constitution."[18] Essentially, CompTel asserts that defining the benchmark by reference to the Big Three's rates denies OSPs equal protection of the laws because the proposed benchmark effectively classifies AT&T, MCI, and Sprint in a manner that will not allow them to elude the Commission's disclosure requirements regardless of what rates they charge.[19]

Classifications that are not "suspect" or "quasi-suspect" are reviewed under the rational basis standard and will be upheld unless they bear no rational relationship to *any* conceivable legitimate government interest.[20] OSP classifications are not suspect or quasi suspect.[21] Thus, in order to prevail on

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[18] CompTel Comments at 15 (*quoting Romer v. Evans*, 116 S.Ct. 1620, 1628 (1995)). A similar argument was made by the American Network Exchange, Inc. on page 3 of its comments.

[19] CompTel Comments at 11-15.

[20] *Heller v. Doe*, 113 S.Ct. 2637, 2642 (1993) ("[A] classification neither involving fundamental rights nor proceeding along suspect lines is accorded a strong presumption of validity. Such a classification *cannot* run afoul of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate government purpose.") (emphasis added) (citations omitted).

[21] It is fundamental Constitutional jurisprudence that classifications based on race, national origin and alienage are suspect. Classifications based on gender and legitimacy are quasi-suspect.

its claim that its constitutional rights were violated, CompTel must show that there is no legitimate reason for the standard set out by the Commission. In its attempt to meet this heavy burden, CompTel insinuates that the FCC's preferred benchmark proposal is invalid because it demonstrates the Commission's "desire to harm a politically unpopular group."[22]

CompTel's arguments must fail. In order to prevail on a rational basis equal protection argument based on societal fear or dislike, CompTel must show that the *only* reason for the Commission's action is to impose a burden on a disfavored group.[23] CompTel cannot make such a showing for two reasons. First, its allegation does not show that the "unpopularity" of the affected OSPs was even a factor in the Commission's determination, let alone the exclusive rationale. Second, assuming *arguendo* that CompTel could show Commission bias, the FCC, nevertheless, has an interest in having interLATA 0+ calls fall within the consumer's reasonable expectations for such calls.[24]

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[22] *Heller*, 113 S.Ct. at 2642.

[23] *U.S. Dept of Agriculture v. Moreno*, 413 U.S. 528, 534 (1972) ("a *bare* . . . desire to harm a politically unpopular group cannot constitute a legitimate government interest.") (emphasis added, Court's emphasis deleted).

[24] In footnote 32 of its Comments CompTel asserts that consumers expect to pay a premium price for certain services under appropriate circumstances. The example is given of higher priced pizza in an airport. This analogy would be consistent to the 0+ dialing context only if the elevated airport prices were revealed to consumers after their meal was devoured and they had returned home from the trip. Prices for airport edibles are disclosed (continued...)

C. The First Amendment is Not Implicated Where an OSP is Required to Disclose Prices Before Completion of the Call

Oncor argues that requiring carriers whose rates are above FCC-set benchmarks to disclose their rates constitutes mandated speech. Oncor further argues that such a mandate would violate the First Amendment's prohibition on government imposed disclosure requirements on commercial speech absent a finding that such disclosure is necessary to avoid public deception or to serve some other substantial government interest.[25]

The speech mandated by the Commission passes constitutional muster. The Court has long held that commercial speech is afforded protection that is less extensive than that afforded noncommercial speech.[26] The government has a well-defined interest in protecting consumers from deceptive, shocking or misleading commercial practices.

The combination of the lack of effective price disclosure mechanisms for 0+ calls and the flagrant over-pricing of these services is tantamount to constructive deception of consumers. At the very least, such practices are

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[24](...continued)
before purchases because it is unreasonable to assert that because airport passengers are in transit they may be charged prices that are both undisclosed and substantially higher than those to which they have grown accustom. The same is true concerning transient consumers in need of payphone services.

[25] Oncor Comments at 10-14.

[26] *See Central Hudson Gas & Electric Company v. Public Service Comm'n of New York*, 447 U.S. 557 (1980).

misleading when the OSP's prices are not disclosed in advance of 0+ calls. The Court permits the Federal Government to prevent the dissemination of commercial speech that is false, deceptive or *misleading*.[27] The reverse is also true. Thus, the government can mandate speech where silence would either be deceptive or misleading. In "virtually all of [its] commercial speech decisions to date" the Court has emphasized the fact that "disclosure requirements trench much more narrowly on an advertiser's interests than do flat prohibitions."[28]

The Court has consistently held that "warning[s] or disclaimer[s] might be appropriately required . . . in order to dissipate the *possibility* of consumer confusion."[29] Therefore, the Court will only consider "unjustified or unduly burdensome warnings" constitutionally suspect.[30] The warnings here are justified and present little burden to OSPs. The disclosure requested by the FCC is a brief, neutral, and relevant statement of fact that does not impact any privacy interest of OSPs. The speech does not involve political or religious matters. Additionally, operators may provide further clarification to callers concerning OSPs' rates. Therefore, if the Commission were to enact a

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[27] *Friedman v. Rogers*, 440 U.S. 1 (1979).

[28] *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 651 (1995).

[29] *In re R.M.J.*, 455 U.S. 191, 201 (1981) (emphasis added).

[30] *Zauderer*, 471 U.S. at 651 (1995).

rule requiring disclosure of OSPs' rates over the benchmark, there would be no constitutional violation.

III. THE COMMISSION SHOULD ESTABLISH BENCHMARKS BASED ON THE RATES OF THE THREE LARGEST OSPS PLUS A REASONABLE MARKUP.

A. Utilizing the Rates of the Three Largest OSPs

In its *Second Further Notice*, the Commission found that the record in this proceeding "supports the conclusion that [it] should establish benchmarks, based on the reasonable expectation of consumers, for OSPs' interstate rates and associated charges that consumers must pay for operator services."[31] In support of this conclusion, the Commission tentatively concluded that the most useful benchmark for protecting consumers against unexpectedly high OSP prices would be one set at a level approximating the average price charged by the three largest OSPs ("the Big Three") -- currently AT&T, MCI and Sprint. The Commission sought comment on that conclusion and on the appropriateness of establishing an additional price margin, such as 15%, above the benchmark.[32]

Some parties opposed the Commission's proposal that a benchmark be set based on the average rates of the three largest OSPs. Bell Atlantic[33]

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[31] *Second Further Notice* at ¶ 23.

[32] Second Further Notice at ¶ 24.

[33] Comments were filed jointly by Bell Atlantic, BellSouth and NYNEX.

argued that the Commission was operating under a faulty premise when it determined that the prices charged by the Big Three OSPs were within consumer expectations. Specifically, Bell Atlantic argues that most consumers are accustomed to rates of one of the Big Three for the 1+ calls from their home. The assertion concludes that no relationship exists between 0+ and 1+ calls because 1+ calls carry prices that are lower than those of 0+ calls.

That assertion is incorrect. There is a direct relationship between the two types of calls because consumers are also accustom to 0+ rates of the Big Three from their homes, place of business and many payphones. The Big Three price their 0+ calls by adding a surcharge to their 0+ rates which are slightly higher than there 1+ rates. The use of a surcharge in addition to 0+ rates is used universally by the Big Three regardless of whether the call is routed through an operator or connected by use of a calling card. Thus, consumers have begun to expect similar rates for all of their interLATA 0+ calls. As a result of consumer expectations, the Big Three's rates are typically not the subject of consumer complaints. The record supports the contention that the rates of the Big Three serve as a proper yardstick for the benchmark.[34]

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[34] *See* Ameritech Comments at 3-4; Inmate Calling Services Providers Comments at 8; GTE Comments at 5; National Telephone Cooperative Association Comments at 5; New York State Consumer Protection Board (continued...)

Further justification for the use of the rates of the three largest OSPs the benchmark is the fact that, unlike other OSPs, the Big Three "would have a hard time explaining how [their] rate[s] for an operator call from a hotel or pay telephone could be five times the rate for the same operator call from a home or office."[35] The market is a powerful constraint on how much the Big Three can, and will, charge consumers for 0+ calls. Price gouging for 0+ calls by the Big Three would ultimately result in dissatisfied 1+ customers. The Commission's recognition of these market forces at work should be applauded, not challenged.

Despite these strong indicators that the Big Three benchmark is fitting, CompTel and others insist that it is legally insufficient to establish a benchmark on the basis of consumer expectations. These parties effectively argue that the Commission should divorce itself of common sense and prove empirically what every consumer already knows -- many OSPs charge rates far in excess of consumer expectations.

The problem of astronomical rates at pay phones has become so common that the practice of 0+ calling has been dubbed "phone company

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[34](...continued)
Comments at 4-5; New York State Department of Public Service Comments at 2; Ohio Consumers' Counsel Comments at 2-3; Pacific Telesis Group Comments at 3; Sprint Comments at 5; and U S West Comments at 2-3.

[35] Ameritech Comments at 5.

roulette."[36] Although not specifically indicated in the *Second Further Notice,* it has been reported that "[t]he Federal Communications Commission (FCC) and Call for Action, a national consumer group, say that complaints about outrageous pay-phone rates have quadrupled in the past three years."[37] This problem has been exacerbated by the MFJ prohibition against RBOCs choosing interLATA carriers from their payphones. Under the MFJ, site owners select the interLATA carrier and receive commissions from OSPs. Site owners are often more motivated by high commissions and less concerned about possible complaints from transient end users.[38]

B. The Benchmark Factor

The Commission's proposal of adding an additional 15% price margin gives carriers the flexibility to set prices based on their individual costs -- within reason. Pacific Telesis agrees with the Commission's tentative

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[36] *Beware: Pay-Phone Charges Can Be Out Of Sight*, The Tampa Tribune, Mar. 15, 1996, Money and Finance.

[37] *Beware: Pay-Phone Charges Can Be Out Of Sight*, The Tampa Tribune, Mar. 15, 1996, Money and Finance.

[38] Section 276 of the 1996 Act provides that RBOCs shall have the right, subject to negotiations with location providers, to contract with carriers that carry interLATA calls from RBOC payphones, unless the FCC determines that it is not in the public interest. Granting RBOCs the right to negotiate with OSPs will give consumers greater protection against gouging. The RBOCs' desire to protect their name brands and reputations is a strong incentive to ensure that users of RBOC payphones do not experience a shock when they get their bills.

conclusion that a 15% additional price margin would be reasonable. Other parties agree also.

However, some parties support additional flexibility in the price margin. Typically, however, the disagreement over the proper price margin is simply a matter of degree. Ameritech and GTE both recommended a 20% margin. Consolidated Communications Public Services recommended a benchmark in the 15% to 30% range. Regardless of which proposal is adopted by the Commission, the percentage markup should not be so high as to defeat its purpose. The rates that truly shock consumers are those that are several times higher than those of the Big Three. Thus, it is likely that a rate exceeding the established benchmark by as much as 30% will serve to protect consumers. In light of this fact, the Commission should adopt a benchmark factor of no less than 15% and no greater than 30%. These levels will protect consumers and ensure that OSPs' recover costs and earn a reasonable profit.[39]

C. The Unworkable Coalition Benchmark

A number of parties supported the rate levels of the CompTel Coalition proposal, arguing that price disclosure requirements should be based on

[39] Thus, the New York Department of Public Service's suggestion that OSP benchmarks should be no higher than the highest rates charged by the Big Three appears to be an extreme position.

numerical thresholds rather than percentages of the Big Three OSPs. Echoing the same concerns voiced following release of the *Further Notice*, these parties complain that a benchmark based on rates of the largest OSPs would be unauthorized and unfair.[40] CompTel claims that the only justifiable benchmark is the Coalition Rate Ceiling proposal because it is consistent with the cost structure of most OSPs in the industry.[41]

By now, the Comptel proposal has been evaluated at length by the Commission. Nothing has changed. The CompTel proposal is too high and would affect only those companies that engage in the most shameless form of price gouging. While it is important to protect consumers from run-away price gouging, the practice of charging overly aggressive rates must be remedied at all levels. As stated by the New York State Consumer Protection Board "[the CompTel] benchmarks are far too high -- *more than double* the average rates for calling card calls charged by AT&T, MCI and Sprint. Accordingly, they will not identify prices that consumers, in general, would characterize as excessive and would not provide consumers adequate information regarding prices above levels they expect to pay."[42] The Commission can, and must, do more to protect consumers.

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[40] *See, e.g.*, One Call Comments at 3-5.

[41] Comptel Comments at 15-17.

[42] NYSCPB Comments at 6-7 (emphasis added).

IV. BILLED PARTY PREFERENCE SHOULD BE ABANDONED AND, IN PARTICULAR SHOULD NOT BE REQUIRED DURING IMPLEMENTATION OF LOCAL SERVICE NUMBER PORTABILITY

The Commission notes that it intends to "give further consideration to BPP as local number portability develops, which is mandated under Section 251(b)(2) of the 1996 Act."[43] Based on expense alone, the Commission should terminate its BPP inquiries. What is more, implementation of BPP in the number portability context would be counter-productive because of its prohibitive expense. U S West asserts that the Commission is mistaken in its assumption that BPP might become an "incremental cost, riding on the number portability investment."[44] Also, implementation of BPP as a "retrofit" in the number portability design would take years and would lack the necessary incentives to compel a change in consumer dialing habits.[45]

Further, the network design for local number portability is incompatible in both structure and function with that necessary for BPP. Billed Party Preference is a linkage between a database with the consumers preferred carrier for 0+ calls that is intended to route calls across the preferred carriers network. Such databases contain customer information to help determine whether and on who's network the call should be completed. Such

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[43] *Second Further Notice* at ¶ 4.

[44] *Second Further Notice at ¶ 4.* Specifically, U S West notes that a substantial investment would have to be made including the purchase of OSS7 and additional signaling capacity. US West Comments n.26.

[45] Southwestern Bell Telephone Company Comments at 2.

information includes billing options, whether collect calls are acceptable and similar information. Local number portability, on the other hand, requires a routing database. Routing databases help move the call to the proper location and is based on entirely different software logic. Routing databases must be accessed in the middle of a call. Due to the innate incomparability of these two databases, the Commission should abandon any thoughts of reviving BPP in the local number portability proceeding.

V. FORBEARANCE FROM TARIFF OBLIGATIONS

Several state regulators opposed the proposal that the FCC forbear from applying Section 226 tariff filing requirements to non-dominant interexchange OSPs. Another tariffing proponent, the National Telephone Cooperative Association, ("NTCA") supports tariffing because it believes that there is some value in "independent" verification of price information by the Commission.[46]

Pacific Telesis submits that tariffs should not be required for 0+ calling plans. Tariffing will not, and cannot, protect consumers at the point of purchase.[47] Oral disclosure is a much better tool for ensuring consumer protection. While tariffing may be viewed as an additional precautionary

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[46] *See* NTCA Comments at 6.

[47] Southwestern Bell Comments at 5 ("[A] consumer using a payphone does not have ready access to tariffs.").